

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]		GRADE A1C	AFSN/SSAN [REDACTED]			
TYPE	PERSONAL APPEARANCE		X RECORD REVIEW			
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL		
YES	NO					
	X					
MEMBERS SITTING			VOTE OF THE BOARD			
			HON	GEN	UOTHC	OTHER
[REDACTED]						X
						X
						X
						X
						X
ISSUES A94.05	INDEX NUMBER A66.00	EXHIBITS SUBMITTED TO THE BOARD				
		1	ORDER APPOINTING THE BOARD			
		2	APPLICATION FOR REVIEW OF DISCHARGE			
		3	LETTER OF NOTIFICATION			
		4	BRIEF OF PERSONNEL FILE			
HEARING DATE 2 OCT 02		CASE NUMBER FD2002-0179				
		COUNSEL'S RELEASE TO THE BOARD				
		ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE				
		TAPE RECORDING OF PERSONAL APPEARANCE HEARING				
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE						
REMARKS						
Case heard at Washington, D.C.						
Advise applicant of the decision of the Board, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.						
SIGNATURE OF RECORDER [REDACTED]			SIGNATURE OF BOARD PRESIDENT [REDACTED]			
INDORSEMENT			DATE: 2 OCT 02			
TO: SAF/MIBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742			FROM: SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3 RD FLOOR ANDREWS AFB, MD 20762-7002			

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD02-0179

GENERAL: The applicant appeals for upgrade of discharge to Honorable.

The applicant was offered a personal appearance before the Discharge Review Board (DRB) but declined to exercise this right.

The attached brief contains the available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of discharge is denied.

The board finds that neither evidence of record nor that provided by the applicant substantiates an inequity or impropriety, which would justify a change of discharge.

ISSUE: The applicant believes his discharge is inequitable because it was based on an isolated incident. The Board reviewed the entire record and found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge. The records indicated the applicant received a Letter of Reprimand for wrongfully possession marijuana and a Letter of Counseling for failure to follow instructions. The record indicates that the applicant was arrested for possession while on leave in Chicago, Illinois. Upon his return to duty, applicant informed his supervisor of this, who then referred the case to the AFOSI for further action. During their interview, he admitted to possessing and smoking marijuana while in Chicago. The Board concluded the drug abuse was a significant departure from the conduct expected of all military members. The Board found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge. The Board concluded the misconduct of the applicant appropriately characterized his term of service.

CONCLUSIONS: The Discharge Review Board concludes that the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and that the applicant was provided full administrative due process.

In view of the foregoing findings the board further concludes that there exists no legal or equitable basis for upgrade of discharge, thus the applicant's discharge should not be changed.

Attachment:
Examiner's Brief

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD

[REDACTED]
[REDACTED]
(Former A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 01/06/14 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 80/12/23. Enlmt Age: 18 8/12. Disch Age: 20 5/12. Educ: HS DIPL. AFQT: N/A. A-76, E-70, G-78, M-49. PAFSC: 3E231 - Pavements and Construction Equipment Apprentice. DAS: 00/10/09.

b. Prior Sv: (1) AFRes 99/09/03 - 99/11/22 (2 Mos 20 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 99/11/23 for 6 yrs. Svd: 1 Yr 6 Mos 22 Das, all AMS.

b. Grade Status: A1C - 00/01/07

c. Time Lost: none.

d. Art 15's: None.

e. Additional: LOR, 17 MAY 01 - Possession of marijuana.
LOC, 16 MAY 01 - Failure to follow instructions.

f. CM: None.

g. Record of SV: None.

(Discharged from Travis AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (1) Yr (9) Mos (12) Das
TAMS: (1) Yr (6) Mos (22) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/04/12.
(Change Discharge to Honorable)

Issue: My discharge was inequitable because it was based on an isolated incident which was stricken off my record and the Airforce (sic) did not allow adequate time for the courts to convey the result of such case therefore dismissing me from Service under honorable conditions and I would like to have my discharge upgraded to honorable as this incident was dismissed from my record on June 18th and had the Airforce (sic) waited just 4 more days for the Judges

decision I would still be in the United States Airforce (sic).

ATCH

1. Certificate of Release (DD Form 214)
2. Certificate of Conviction/Disposition

02/08/07/cr



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 60TH AIR MOBILITY WING (AMC)

07 JUN 2001

MEMORANDUM FOR 60 AMW/CC

FROM: 60 AMW/JA
510 Mulheron Street
Travis AFB CA 94535-2406

SUBJECT: Legal Review of Administrative Discharge Action Under AFI 36-3208,
[REDACTED], FR [REDACTED], 60th Civil Engineer Squadron

1. **Introduction:** This action is legally sufficient. On 29 May 01, the 60 CES/CCQ initiated separation action against Respondent pursuant to AFI 36-3208, paragraph 5.54, Misconduct, Drug Abuse. The 60 CES/CCQ recommended a general service characterization and the 60 SPTG/CC concurred. Probation and Rehabilitation is not authorized for drug abuse cases, pursuant to AFI 36-3208, paragraph 7.2.6. This 20-year-old respondent has 18 months of active military service and was awarded the Air Force Training Ribbon. A detailed summary of his personal data is contained in paragraph 2 of the Commander's Recommendation for Discharge letter, dated 5 Jun 01. After conferring with counsel on 29 May 01, Respondent elected not to submit matters for the separation authority's consideration (Tab 3).

2. **Basis For Discharge:** Between 14 Mar 01 and 30 Mar 01, Respondent was arrested for the possession of two "nickel" bags of marijuana while on leave in Chicago, Illinois. Upon his return to duty, Respondent informed his supervisor of this, who then referred the case to the Air Force Office of Special Investigations (AFOSI) for further action. During their interview of Respondent, he admitted to possessing and smoking marijuana while in Chicago. Respondent's actions are evidenced by Illinois Report [REDACTED], dated 31 Mar 01, and AF Form 1168, Statement of Suspect/Witness/Complainant. For his behavior, Respondent received a letter of reprimand (LOR), dated 17 May 01, with establishment of an unfavorable information file (UIF) on 21 May 01.

3. **Discussion:**

a. Airmen are subject to discharge when there is evidence of one or more acts or patterns of misconduct. This includes conduct of a nature that tends to disrupt good order, discipline, or morale within the military community. It also includes behavior that tends to cause dissent, disruption, or deterioration of mission effectiveness. Respondent's misconduct, outlined in paragraph 2, clearly warrants discharge. If you determine, based upon the behavior noted above, that there is a basis for which to discharge Respondent, you may then look at his entire military record to decide whether or not to discharge him at this time. In light of Respondent's drug abuse, discharge is clearly appropriate.

b. Drug abuse is incompatible with military service, and members who abuse drugs adversely affect the ability of the Air Force to maintain discipline, good order, mutual trust, and confidence among its members. Drug abusers also adversely affect the ability of the Air Force to carry out assignments and worldwide deployment taskings, recruit and retain members, maintain public acceptance of the military service, and prevent breaches of security. As such, a member found to have abused drugs should be discharged, unless the initiating commander recommends a waiver of discharge under AFI 36-3208, paragraph 6.60.

c. Before recommending a waiver, the initiating commander should fully consider the nature of the offense involved, all the circumstances surrounding the offense, any matters in extenuation, the airman's military record, and the airman's potential for future productive service. Additionally, the member must meet all seven of the following criteria for retention, listed in paragraph 5.55.2.1:

- (1) Drug abuse is a departure from the member's usual and customary behavior.
- (2) Drug abuse occurred as a result of drug experimentation.
- (3) Drug abuse does not involve recurring incidents, other than drug experimentation.
- (4) The member does not desire to engage in or intend to engage in drug abuse in the future.
- (5) Drug abuse under all the circumstances is not likely to recur.
- (6) Under the particular circumstances of the case, the member's continued presence in the Air Force is consistent with maintaining proper discipline, good order, leadership, and morale.
- (7) Drug abuse did not involve drug distribution.

d. The member bears the burden of proving she/he meets the above criteria and that retention is, therefore, warranted. Consequently, unless you find each of the above retention criteria exists, Respondent must be separated. In this case, the 60 CES/CCQ did not recommend a waiver of discharge, nor did Respondent assert his continued presence in the Air Force would be consistent with discipline, good order, leadership, and morale. Given the need for law-abiding, mission-ready airmen, and the lack of evidence that Respondent's continued presence in the Air Force would be consistent with the maintenance of proper discipline, good order, and morale, retention is clearly inappropriate. As such, I believe Respondent should be discharged.

4. **Characterization of Service:** Pursuant to AFI 36-3208, table 1.3, discharges under paragraph 5.54 may be characterized as Honorable, General, or Under Other Than Honorable Conditions (UOTHC). An honorable characterization is reserved for those airmen whose service has met Air Force standards of acceptable conduct and performance, and whose service has been so meritorious that any other characterization would be clearly inappropriate. Respondent does not meet this standard. A general discharge, on the other hand, is appropriate when an airman's service has been honest and faithful, but has included significant negative aspects that outweigh

any positive aspects of the airman's military record. A UOTHC discharge, instead, is appropriate when the grounds for discharge are based on acts or omissions that significantly depart from the conduct expected of airmen. In this case, Respondent's drug use outweighs the positive aspects of his service record. In light of this and Respondent's time in service, I believe a general service characterization to be the most appropriate. As such, I concur with both commanders' recommendations for a general discharge.

5. **Options:** Pursuant to AFI 36-3208, paragraph 5.56, as SPCMCA, you may personally approve or disapprove any recommendations for discharge processed by notification according to chapter 6, section B, and resulting in general discharge under section H. Your options are to

a. forward the case to the 15 AF/CC with a recommendation for retention, if you find Respondent did not abuse drugs;

b. forward the case to the 15 AF/CC with a recommendation for retention, if you find Respondent abused drugs but meets all seven retention criteria listed in AFI 36-3208, paragraph 5.55.2.1;

c. forward the case to the 15 AF/CC with a recommendation for an honorable discharge without P&R;

d. discharge Respondent with a general discharge, without P&R; or

e. direct reinitiation of processing pursuant to AFI 36-3208, chapter 6, section C - Board Hearing or Board Waiver, if you believe the issuance of a UOTHC is warranted.

6. **Recommendation:** Discharge Respondent with a general discharge, without P&R, by signing the appropriate letter at Attachment 1. Further, I recommend you sign the letter at Attachment 2, barring Respondent from Travis AFB.

[REDACTED]

[REDACTED], Captain, USAF
Assistant Staff Judge Advocate

Attachments:

1. Proposed Letter
2. Barment Letter
3. Case File ([REDACTED])

I concur.

[REDACTED]

[REDACTED], Colonel, USAF
Staff Judge Advocate



DEPARTMENT OF THE AIR FORCE
60TH CIVIL ENGINEER SQUADRON (AMC)

MEMORANDUM FOR A1C [REDACTED] 60 CES

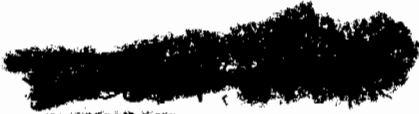

29 May 01

FROM: 60 CES/CCQ
151 Dixon Avenue
Travis AFB CA 94535

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force pursuant to AFI 36-3208, paragraph 5.54, Misconduct, Drug Abuse. If my recommendation is approved, your service may be characterized as Honorable, General, or Under Other Than Honorable Conditions. I am recommending that your service be characterized as General.
2. My reason for initiating this action is that between 14 Mar 01 and 30 Mar 01, while you were on leave in Chicago, Illinois, you were arrested for the possession of two "nickel" bags of marijuana. Upon your return to duty, you informed your supervisor of your situation, who then referred this to the Air Force Office of Special Investigation (AFOSI) for further action. During their interview, you admitted to possessing and smoking marijuana while in Chicago. This is evidenced by Illinois Report [REDACTED], dated 31 Mar 01 and AF Form 1168, Statement of Suspect, Witness, Complainant. For your actions, you were given a letter of reprimand, dated 17 May 01, with establishment of an unfavorable information file (UIF) on 21 May 01 (Atch 1, Tab 1).
3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction, or a higher authority, will decide whether you are to be discharged or retained in the Air Force, and if you are discharged, how your service should be characterized. If you are discharged, you will be ineligible for reenlistment in the Air Force, and any special pay, bonus monies, or education assistance funds may be subject to recoupment.
4. You have the right to consult with an attorney. Military legal counsel has been obtained to assist you. I have made an appointment for you to speak with **Captain [REDACTED]**, Area Defense Counsel, 540 Airlift Drive, Bldg. 381, Suite D-100, Travis AFB, California, 94535-2479, DSN 837-4569; Commercial: (707) 424-4569, on 29 May 01 at 1400. You may also consult civilian counsel at your own expense.
5. You have the right to submit statements on your own behalf. Any statements you wish the separation authority to consider must reach me by (three workdays from service of this letter) 1 June 2001, no later than 1005 hours, unless you request and receive an extension for good cause. I will send the separation authority any documents you submit.

6. If you fail to consult counsel or submit statements on your own behalf, your failure will constitute a waiver of your right to do so.
7. You have been scheduled for a separation physical examination on 31 May 01 at 0900. You also have an appointment at the Primary Care Clinic on 31 May 01 at 1015 to consult with P.A. Patterson.
8. Any personal information you furnish in rebuttal will be covered by the Privacy Act of 1974. A copy of AFI 36-3208 is available for your use in the Orderly Room.
9. Execute the acknowledgment and return it to me immediately.


 Lt, USAF
Section Commander

Attachments:

1. LOR, 17 May 01 w/Atchs
2. Other Pertinent Information:
 - MFR, 16 mar 01
 - LOC, 16 May 01
 - ADAPT Referral Data Worksheet